

SUMMARY

RULE 121

Declaratory Orders

AID issues this emergency rule in order to avoid challenges to our authority to issue declaratory orders. The Arkansas Administrative Procedures Act requires AID to have a validly enacted Rule authorizing declaratory Orders. Ark. Code Ann. §25-15-206 states that each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. Currently, for authority to issue declaratory orders, the only reference to AID authority to issue declaratory orders, is referred to in a document entitled, "AID Rules of Practice and Procedure," written prior to 1980. There exists no Rule history file for this document as we do have and maintain for our promulgated rules. We are therefore unsure if these Rules of practice and procedure were validly promulgated. We currently have a pending declaratory action and, out of an abundance of caution, we are in need of immediate rule authority and authority in the future to issue declaratory orders.

The proposed emergency Rule herein for declaratory orders is copied from the Arkansas Attorney General's "Model Rule of Procedure for Regulatory and Licensing Agencies." AID copied the Model Rule section in this manual pertaining to declaratory orders.

We intend to adopt the currently proposed emergency rule as a permanent rule within 120 days.